

.01 Definitions

Capital Defending Attorney

Defending Attorney Roster

Supervising Defending Attorney

.02 Requirements, Standards and Procedures for Representing Indigent Persons

A. .010 Counties Shall Provide Indigent Representation to Provide Effective Representation

1. Adequately Resource Indigent Defense
 - a. Select Indigent Defense System from options in IC 19-859
 - b. Appropriate Funds per IC 19-860, 19-861, 19-862
 - c. Provide Sufficient Time and Private Space per 19-861
 - d. Use Qualified Defending Attorneys and others per 19-855
 - i) PD Roster
 - ii) Comply with Indigent Defense Standards
 - iii) Staff and contractors must maintain applicable professional certificates, licenses and permissions required by applicable local, state and federal laws
 - e. Defending Attorney Contract Terms
 - i) Prohibit single fixed fee for services and expenses per IC 19-859(4)
 - ii) Compliance with Indigent Defense Standards
 - iii) Indigent defense services to be provided including case types
 - iv) Compensation for services
 - v) Other expenses and/or costs
 - vi) Detailed records of services and expenditures
 - vii) Case files/records
 - f. Review
 - i) Regularly review Defending Attorneys for compliance with Indigent Defense Standards and resources needed for continued compliance including
 1. Monitor Workloads
 2. Monitor Vertical Representation
 - ii) Budget for appropriate resources and seek financial assistance
 - g. Comply with all laws to ensure Indigent Persons receive effective representation
2. Indigent Defense System must be Independent of Political and Judicial Influence
 - a. Selection/Retention of Defending Attorneys without judicial or political involvement or other conflict of interest

- b. Nonpartisan Committee (i) for selection of Lead/Chief Defending Attorney, and (ii) to review disputes between Defending Attorneys and the County
 - c. Counties shall not act against a Defending Attorney for advocating for Indigent Persons
 - d. Independent Legal Counsel Review of Defending Attorney Contracts
- 3. Indigent Defense must include Equitable Resources for Defense and Prosecution
 - a. Equity between Defending Attorneys and Prosecutors per IC 19-860
 - b. Adequately Fund Indigent Defense including Budget/Resources Equity
 - c. Compensation comparable in same jurisdiction for attorneys and staff with similar experience
 - d. Provide access to resources including technology, information systems, experts and facilities commensurate with
 - i) Those available to prosecutors and
 - ii) At the cost charged to prosecutors
 - e. Regularly review and assess equity between and resources needs of Defending Attorneys and prosecutors
- 4. Indigent Defense must ensure
 - a. Defending Attorneys have sufficient time and confidential space for client meetings
 - b. Defending Attorney's Workloads and maximum caseloads permit effective representation
 - i) Maximum caseloads
 - a) 2 active capital cases at a time
 - b) 210 non-capital felony cases annually
 - c) 520 misdemeanor cases annually
 - d) 232 juvenile cases annually
 - e) 105 child protection or parent representation cases annually
 - f) 608 civil contempt or mental health cases annually
 - g) 35 non-capital substantive appeal cases annually
 - h) The caseload calculation includes representation in problem-solving courts and for a mixed caseload, cases from more than one category, adds the percentage of the maximum caseload for each category and then adds those percentages not exceed 100%.
 - ii) A caseload or should be adjusted downward when the mix of case assignments is weighted toward more serious offenses, complex cases or those requiring significant expenditure of time and resources.
 - iii) The maximum workload is based on defending attorneys having
 - a) Adequate support staff;
 - b) Cases of average complexity;
 - c) Reasonable distribution of cases throughout the year; and
 - d) Only non-supervisory duties.

e) If a defending attorney's workload does not have ii)a, b, c, or d, that attorney shall inform the supervisor or board of county commissioners for appropriate adjustment to caseload and notify the Court if Workload maximums are being exceeded or may be exceeded as the result of any Court appointment

- c. Defending Attorneys can avoid economic incentives or disincentives that impair Defending Attorneys' ability to provide effective representation
- d. Defending Attorneys have the ability, training and experience matching nature and complexity of cases assigned
- e. Defending Attorneys provide Vertical representation
- f. Defending Attorneys are regularly supervised by qualified attorney
- g. Defending Attorneys identify and resolve conflicts

B. .020 Court Appointments for Indigent Persons

1. Competent Counsel per IC 19-855 and quality representation per constitutional and professional standards including IRPC 1.1 et al; IRPC 5.1; IRPC 5.4; IBCR 400-408; ICR 44.2-44.3
2. Appointments from PDC Rosters
 - a. Exceptions
 - i) Appointment from Roster not practical and expeditious
 - ii) Court makes findings that Attorney meets Indigent Defense Standards and, if applicable, Capital Counsel Qualifications
 - iii) Court order of appointment requires Attorney to apply for applicable PDC Roster(s) within 30 days of appointment
 - iv) Attorney's approval date for Roster(s) will be retroactive if application approved by PDC
2. Additional Requirements for Appointments in Capital Cases
 - a. Assessment of Defending Attorney's workload when appointing counsel in a capital case per IC 44.3(d)
 - b. Appointment of no less than two qualified Defending Attorneys, one designated lead and the other/s as co-counsel, at or before the first appearance in a capital case
3. Court shall not appoint a Defending Attorney to any case with a conflict of interest to that case

C. .030 Defending Attorneys

1. Minimum Requirements for Defending Attorneys to Provide Effective Representation
 - a. Idaho Licensed per IC 19-855, 19-860, 3-408 and IBCR
 - b. Competent to counsel and defend person charged with crime per IC 19-855, 19-860, ICR 44.2-44.3, IRPC 1.1 et. al, 5.1, 5.4, and IBCR 400-408
 - c. Demonstrated Ability, Training and Experience and Understanding related to representing Indigent Persons
 - i) All Defending Attorneys

- a) Apply laws, rules, procedures and practices and perform thorough legal research and analysis
- b) Protect client confidentiality and dedicate sufficient time to each case
- c) Provide vertical representation at all substantive hearings
 - i) Be immediately available in-person or via technology to an indigent person upon appointment
 - ii) Preserve the client's constitutional and statutory rights
 - iii) Discuss the charges/case and possible consequences with the client
 - iv) Obtain information relevant to release pursuant to Idaho Criminal Rule 46 and seek release
 - v) Under conditions that serve the best interests of the client
 - vi) Encourage the entry of a not guilty plea at initial appearance except in the extraordinary of circumstances where constitutionally appropriate
 - vii) Conduct a prompt and independent investigation of the case
 - viii) Request funds to retain an investigator to assist with the client's case
 - ix) Request the assistance of experts where it is reasonably necessary to prepare the defense and rebut the prosecution's case
 - x) Continually evaluate the case for appropriate defense investigations or expert assistance
- d) Work within caseload or workload limits (defined in 61.01.010) and if an attorney's caseload exceeds the numeric standard, the attorney shall include with the defending attorney annual report an attestation stating
 - i) The reason for the excessive caseload or workload
 - ii) How each client's representation met constitutional standards.
- e) Identify and resolve conflicts of interests in compliance with ISB rules and constitutional standards
- f) Forensic and scientific methods used in prosecution and defense
- g) Mental, psychological, medical, environmental issues and impacts
- h) Written and oral advocacy
 - i) Motions practice to exhaust procedural and substantive defenses
 - j) Evidence presentation and direct and cross examination
 - k) Experts as consultants and witnesses and expert evidence
 - l) Forensic investigations and evidence
- m) Mitigating factors and evidence
- n) Jury selection methods and procedures

- o) Electronic filing, discovery and evidence and systems
- p) Quality and zealous representation
- q) Competence and commitment to engage experienced attorneys or decline appointment
- r) Supervision and active management to ensure compliance with
 - ii) Qualifications and rules
 - iii) Appropriate case assignments, caseloads and workloads
- ii) Additional Requirements for Capital Counsel
 - a) Advanced level of the minimum requirements for Defending Attorneys
 - b) Capital Laws, rules, procedures and practices
 - c) Capital Mitigation
 - d) Use of mental health evaluations and evidence
 - e) Managing and litigating complex cases
 - f) Assembling and leading a trial team
 - g) Capital jury selection methods and procedures
 - h) Meet ABA Guidelines for the Appointment and Performance of Defense Counsel in Death Penalty Cases to extent they do not conflict with Idaho law
 - i) Additional Requirements for Lead Trial Counsel
 - ii) Active trial practitioner with no less than 10 years in criminal defense litigation
 - iii) Lead counsel in no less than 10 felony jury trial tried to verdict
 - iv) Lead or co-counsel in no less than 1 capital case tried to verdict or capital sentence
 - j) Additional Requirements for Trial Co-Counsel (who are not qualified as lead trial counsel)
 - ii) Active trial practitioner with no less than 5 years in criminal defense litigation
 - iii) Lead counsel in no less than 5 felony jury trial tried to verdict
 - iv) Lead or co-counsel in no less than 1 capital case tried to verdict or capital sentence
 - k) Additional Requirements for Lead Appellate/Post-Conviction Counsel
 - ii) Active appellate/post-conviction practitioner with no less than 10 years in criminal defense litigation
 - iii) Lead counsel in no less than 1 capital or federal capital habeas corpus case
 - l) Additional Requirements for Appellate/Post-Conviction Co-Counsel (who are not qualified as lead appellate/post-conviction counsel)
 - ii) Active appellate/post-conviction practitioner with no less than 5 years in criminal defense litigation
 - iii) Counsel in no less than 1 capital or federal capital habeas corpus case

- m) Alternate Requirement for Lead Trial Counsel and Lead Appellate/Post-Conviction Counsel who do not meet the numeric years of practice and/or numeric number of trials/cases
 - ii) Meet all the other minimum requirements to ensure their abilities, training and experience are appropriate given the nature and complexity of a capital case, and
 - iii) Demonstrate they are qualified to provide Lead Trial Counsel Services or Appellate/Post-Conviction Counsel services, as applicable, despite their years in practice and/or trials/cases handled
 - iii) Additional Requirements for Capital Counsel and Capital Defense Teams
 - a) No less than 2 qualified Defending Attorneys, one designated lead and the other/s as co-counsel, at or before the first appearance in a capital case
 - b) Counsel must immediately assemble team consisting of at least
 - ii) Fact Investigator
 - iii) Mitigation Specialist
 - iv) Person trained and professionally qualified to screen for mental and psychological screenings
 - v) Other person/s needed to provide effective and zealous representation
 - c) Team members must continue training and meet standards within their profession
 - iv) Minimum Requirements for Defending Attorney Offices, Capacity, Leadership and Resources
 - a) Defending Attorneys must have sufficient time and private space to meet with and effectively represent Indigent Persons
 - ii) Defending Attorneys must maintain Workloads permitting effective representation
 - b) Supervising Defending Attorneys must actively monitor and manage case assignments and ensure Defending Attorney is not assigned cases exceeding Workload maximums
 - ii) Defending Attorneys approaching or exceeding Workload maximums must notify County officials and request appropriate resources, and notify the Court if Workload maximums are being exceeded or may be exceeded as the result of any Court appointment
 - c) Maintain Vertical Representation
 - ii) Supervising Defending Attorneys must actively manage case assignments and ensure Vertical Representation is being provided in each case
 - iii) Defending Attorneys who are unable to provide Vertical Representation must notify County officials and request appropriate resources
 - d) Leadership and supervision
 - ii) Defending Attorneys must be supervised by a Supervising Defending Attorney

- iii) Supervising Defending Attorneys must actively manage case assignments and Defending Attorney to ensure representation of Indigent Persons is provided in compliance with Indigent Defense Standards

- v) Rosters Procedures

- a) Defending Attorney Roster

- ii) Application and Review (Confidential and exempt from Public Records Act per IC 74-105(18)(a))

- iii) Provisional PDC Roster status for new Defending Attorneys

- a. Responsible Supervising
 - b. Training
 - c. Meet qualifications within 1 year of hire/appointment

- iv) 2-year term

- b) Capital Defending Attorney Roster

- ii) Application and Investigation (Confidential and exempt from Public Records Act per IC 74-105(18)(a))

- iii) 2-year term

- c) Renewal

- ii) To remain on the applicable Roster, renewal process must be completed prior to expiration of then-current term

- iii) Renewal application forms will ask questions/cover information about the renewal applicant's experience during the previous term, and forward-looking details, like staff availability

- 2. MCLEs

- a. MCLEs for All Defending Attorneys

- ii) Approved by Executive Director who is not required to approve courses not pre-approved prior to completion
 - iii) Approved by ISB
 - iv) Directly relate to Idaho substantive or procedural law and the Defending Attorney's Indigent defense practice and will not be approved if not related

- b. Number and type required for each roster:

- ii) Defending Attorney Roster: Minimum of 7 MCLE credits each year

- iii) Capital Defending Attorney Roster: Minimum of 12 MCLE credits obtained through a pre-approved, nationally recognized, well-established capital **trial** training program

c. Additional Requirements for Defending Attorneys with Supervisory or Management Duties:

- ii) Minimum of 2 MCLE credit each year related to leadership skills, attorney management or mentoring

.040 Records, Reporting and Review

A. Defending Attorney Minimum Recordkeeping and Reporting Requirements

1. Records and other information regarding Defending Attorneys' compliance with Indigent Defense Standards
2. Accounting records regarding how County funds (including any PDC annual financial assistance) are spent
3. Accounting records regarding how ELF funds are spent
4. Annual Report per 19-864
5. Regularly report to County regarding expenditures and resource needs and provide the County with information necessary for County to identify need for, and request, financial assistance for indigent defense services

B. County Minimum Recordkeeping and Reporting Requirements

1. County's compliance with its statutory and regulatory obligations regarding indigent defense services
2. Accounting records and other information regarding
 - a. Appropriation and spending of County funds for indigent defense services
 - b. Spending of PDC financial assistance
 - c. Spending of County funds for extraordinary indigent defense for which County seeks ELF funding
3. Annual Financial Report
 - a. County Appropriation/Budgeting/Spending
 - i. Overall
 - ii. Indigent defense
 - b. Use of PDC Financial Assistance

.050 Compliance

A. Deficiencies per 19-862A

1. Reporting and Review
 - a. Counties and Defending Attorneys have duty to report deficiencies to PDC
 - b. Deficiencies may be reported by Indigent Person, PDC or others
 - c. PDC staff will investigate and report to Commission
2. Non-Willful Deficiencies
 - a. Must be addressed in County's next compliance proposal/financial assistance application
 - b. Compliance proposal must include timeframe to become compliant and progress reports from county to PDC
3. Material and Willful Non-Compliance
 - a. Commission decides whether Material and Willful following investigation by PDC Staff and recommendation of the Executive Director

4. Notice of PDC intent to remedy specific Deficiencies to the extent necessary to comply with Indigent Defense Standards at County expense
 - a. County and Commission meet at least once and if not resolved, engage in mediation
5. Notice of PDC decision to remedy specific Deficiencies at County expense
 - a. Opportunity for administrative review
6. PDC action to remedy specific Deficiencies

.03 Financial Assistance and Training Resources

- A. .010 Annual Financial Assistance for Counties
 1. Minimum Requirements per 19-862A
 - a. Compliance Plan and Cost Analysis
 - b. Compliance Attestation
 - c. Itemization of indigent defense costs and expenditures and anticipated indigent defense costs and expenditures
 - d. Information from Defending Attorneys necessary to provide information for 1.a, b and c
 - e. Other information requested by PDC Staff, Commission or representatives
 2. Availability of Funds/Preference per 19-862A
 - a. Awards subject to availability of funds, with preference given as follows
 - i. First: to counties that need assistance to cure Deficiencies
 - ii. Second: to counties that need assistance to continue complying with Indigent Defense Standards
 - iii. Third: to counties for other improvements to indigent defense
 - b. Additional awards for joint office of public defender are subject to availability of funds, with preference given to joint offices that centralize indigent defense and improve management, independence, scope of defense services and accountability
 3. Procedures
 - a. PDC Staff review and Executive Director makes recommendation to Commission (unless Chair appoints a subcommittee)
 - b. Appointed subcommittee of Commission reviews and makes recommendation to Commission
 - c. Commission reviews recommendation of committee or Executive Director, as applicable, makes final decision on award
 - d. Commission shall direct PDC Staff to withhold a percentage of awarded financial assistance until designated compliance
- B. .020 Extraordinary Litigation Fund
 1. Confidential and exempt from Public Records Act per IC 74-105(18)(b)
 2. Demonstrate extraordinary need and financial hardship for county
 3. Defending Attorneys may request for future costs
 4. Counties may request for reimbursement for costs
- C. .030 Training Resources
 1. PDC Training

- a. May partner with outside organizations to present free or reduced cost training
 - b. For PDC roster members. Persons not on PDC roster and registered through applicable partner organization are not eligible for training, training funds or reimbursement
- 2. Non-PDC Training Scholarships
 - a. For PDC roster members. Persons not on PDC roster and registered through applicable partner organization are not eligible for training funds or reimbursement
 - b. One scholarship per year per person
 - c. Scholarships funds are limited

.04 Audit and Appeal

- A. .010 PDC Audit and Inspection
 - 1. County Budget and Expenditures
 - 2. Indigent Defense Services Contracts
 - 3. Indigent Defense Records (any confidential information redacted)
 - a. Data reported in Defending Attorney Annual Report
 - b. Verification of reported data
- B. .020 Appeal Process